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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,857	05/14/2001	Lance E. Brothers	HES 99.0350U1C1	1002

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EXAMINER

MARCANTONI, PAUL D

ART UNIT	PAPER NUMBER
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1755

12

DATE MAILED: 01/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/854,857

Applicant(s)

Brothers et al.

Examiner

Paul Marcantoni

Group Art Unit

1755

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 12/26/02
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 21-40 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 21-40 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Applicant's arguments filed 12/26/02 have been fully considered but they are not persuasive. Upon further consideration, the allowability of claims 22-40 has been withdrawn because the combination reference would appear to teach the limitations of these dependent claims as well.

Claims 21-40 are rejected under 35 U.S.C. 103(a) as obvious over Reddy et al. (US 6,273,191B1) alone or in view of Cowan et al. '991 or Gilbert et al. '866.

Reddy et al. teach cement composition comprising calcium aluminate cement, accelerator, retarder, water, as well as foam forming and foam stabilizing surfactants thus anticipating the instant invention. Even if not anticipated, Reddy would appear to teach the same components in overlapping amounts. Cowan et al. and Gilbert et al. would appear to teach that the use of lithium salts as accelerators for aluminous cements including those used for subterranean formations would have been obvious to one of ordinary skill in the art. Note that in column 7, first paragraph Reddy et al. teach that a variety of cement set accelerators may be used, calcium salt accelerators such as calcium chloride, calcium nitrite, and calcium formate are preferred. A reference, however, is good for all that it realistically teaches and is not limited to the preferred embodiments. Lithium salts were known at the time of applicants' invention for use in subterranean formations and for aluminous cements and the use of other known or conventional accelerators in the Reddy et al. cement composition would have been obvious to one of ordinary skill in the art because they were known accelerators for subterranean formations at the time of applicants invention.

Response:

The applicants argue that Reddy et al. never disclose that calcium aluminate totally replace the Portland cement. Yet, applicants arguments are not directed to what is being claimed. Applicants merely claim calcium aluminate cement as a component and even use comprising claim language. "Comprising leaves the claim open for the inclusion of unspecified ingredients even in major amounts. Ex parte Davis et al., 80 USPQ 448 (PTO Bd of App.1948). The applicants' own claim language allows for a composition containing both Portland cement and calcium aluminate cement. Applicants do not claim a composition "consisting" of only calcium aluminate cement" and they also do not exclude Portland cement.

The applicants argue that Reddy et al. do not teach a "lithium" salt accelerator. In rebuttal, the examiner disagrees. Column 7, lines 1-5 teaches that a variety of cement accelerators may be used and Reddy is not limited to the preferred accelerators of his invention. His invention is inclusive of those accelerators known at the time of his invention for aluminous cements and underground formations and is thus inclusive of lithium salts in accordance with the teachings of Cowan et al. and Gilbert et al.

For the foregoing reasons, the examiner has made a case of *prima facie* obviousness over the applicants' claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is (703)-308-1196. If attempts to reach the examiner by telephone are unsuccessful, the examiner's

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supervisor, Mark Bell can be reached on (703) 308-3823. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9310 for regular communications and (703)-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.



Paul Marcantoni
Primary Examiner
Art Unit 1755